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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTOINE LaJOHN HARRIS,

Defendant and Appellant.

A121031

**(Contra Costa County
Super. Ct. No. 05-071514-4)**

Defendant Antoine LaJohn Harris appeals his conviction by jury trial of evading a peace officer by reckless driving (Veh. Code, § 2800.2, subd. (a)).¹ He was sentenced to two years in state prison.² Counsel has advised that examination of the record reveals no

¹ Although defendant was properly charged and the jury was properly instructed that evading a peace officer by reckless driving is a violation of Vehicle Code section 2800.2, subdivision (a), the verdict form and abstract of judgment erroneously refer to the offense as a violation of *Penal Code* section 2800.2, subdivision (a). We will order the abstract of judgment corrected to reflect the “Vehicle Code” violation.

² Defendant was initially charged with first degree residential burglary (Pen. Code, §§ 459, 460, subd. (a)) (count 6), two counts of attempted first degree residential robbery (*id.*, §§ 211, 212.5, subd. (a), 664) (counts 7 and 9), first degree residential robbery (*id.*, §§ 211, 212.5, subd. (a)) (count 8), and evading a peace officer by reckless driving (count 10). The information also alleged firearm use enhancements (*id.*, § 12022, subd. (a)(1)) as to counts 6, 7, 8 and 9, and an allegation of committing a burglary while a nonparticipant was present in the residence (*id.*, § 667.5, subd. (c)(21)) as to count 6. The jury found defendant guilty only of count 10 and acquitted him of all other charges.

arguable issues. (*Anders v. California* (1967) 386 U.S. 738; *People v. Wende* (1979) 25 Cal.3d 436.) Counsel has also advised her client in writing that a *Wende* brief was being filed and that defendant had the right to personally file a supplemental brief in this case within 30 days. He has not done so.

BACKGROUND³

Pretrial Proceedings

Defendant was initially tried with codefendants Edjuan Scott and Domingo M., a minor. Defense counsel requested the court enforce a plea agreement defendant and the prosecutor had agreed to the day before, under which defendant would plead guilty to violating Penal Code section 32 and be sentenced to one year in jail. Before defendant could enter his plea, the prosecutor added the stipulation that defendant give a statement to the prosecutor. Defense counsel's request to enforce the plea agreement was properly denied pursuant to *People v. Williams* (1988) 45 Cal.3d 1268. Thereafter, the court granted the People's motion to sever Domingo's trial from that of defendant and Scott.

During pretrial proceedings, a note was found in Scott's sock, and the People moved to admit a portion of it into evidence. Defendant's counsel moved to sever defendant's case from Scott's because the note, if testimonial, prejudiced defendant since counsel would not be able to question Scott about it. The note, directed to Domingo, appeared to be from Scott and set out an exculpatory "script" of the events occurring on the night of the charged offenses. The portion of the note the People sought to use at trial suggested that Scott was putting pressure on robbery victim, Anthony J. (victim), to invoke the Fifth Amendment rather than testify. The court ruled the note was not testimonial pursuant to *Crawford v. Washington* (2004) 541 U.S. 36. The court also found there was no *Aranda-Bruton* issue⁴ since the note was not directed at defendant and denied defendant's motion to sever. Any *Aranda-Bruton* issue notwithstanding, the

³ Since defendant was convicted only of the evading charge, we review the record only as it relates to that charge.

⁴ *Bruton v. United States* (1968) 391 U.S. 123; *People v. Aranda* (1965) 63 Cal.2d 518.

note was ordered redacted to avoid any potential reference to defendant. The court also found the note inadmissible against defendant.

In limine, defendant objected to the admissibility for impeachment purposes of his 2000 juvenile adjudications of carjacking and robbery (Pen. Code, §§ 215, 211). Because defendant did not testify, any error in that ruling is not preserved on appeal. (*People v. Collins* (1986) 42 Cal.3d 378, 383-388.) The court precluded defendant's impeachment with a 2005 misdemeanor conviction for carrying a concealed firearm (Pen. Code, § 12025, subd. (a)(1)) as not being a crime of moral turpitude.

During jury selection, defendant joined Scott's motion for a mistrial on the ground that, prior to being disqualified for cause, Prospective Juror S.J. made comments that "ha[d] the potential of poisoning the entire jury pool." S.J. said she had read about the case and discussed her knowledge of the case. The court properly denied the motion after determining S.J.'s comments did not prejudice the remaining jury panel against defendant and Scott. The court then properly dismissed S.J. for cause based on her independent knowledge of the case.

Trial Testimony

On July 5, 2007, Hercules Police Officers Baisas and Taylor were in their marked patrol car when they were dispatched to a residence located on the 200 block of Falcon Way. En route to the residence, they were given a description of a vehicle leaving the residence. About a block from the residence Baisas and Taylor turned around to pursue a gray Honda which was coming downhill at a high rate of speed. Baisas and Taylor were in the lead patrol car, which began following the Honda. Hercules Police Officer Abetkov joined in the pursuit of the Honda and at a certain point became the lead patrol car. Abetkov was also in a marked patrol car. Baisas, Taylor, and Abetkov were all in uniform. When Abetkov first saw the Honda it was driving on the shoulder and failed to stop at a red light. Abetkov then activated his lights and siren, including a lighted red lamp visible from the front. The Honda was travelling at about 65 miles per hour on Country Run, which has a posted speed limit of 35 miles per hour. The Honda then sped through two red lights. At one point, the Honda was travelling at approximately 80 miles

per hour on a road with a 40 miles per hour speed limit. It then failed to stop at a stop sign.

Eventually, the Honda slowed down to about 10 miles per hour and the driver, identified at trial as defendant, jumped out of the car and ran off while the car was still moving. Abetkov followed the fleeing driver until Baisas and Taylor picked up the pursuit and took defendant into custody. The Honda coasted across a sidewalk and collided with a fence.

Contra Costa County Deputy Sheriff Gogo testified he was in the hallway outside the courtroom when Scott walked past the victim and told the victim to “plead the 5th.” That same day a note was found in Scott’s sock. The court instructed the jury that Scott’s statement to the victim and the note were admissible only against Scott, not against defendant.

The trial court properly instructed the jury. The jury found defendant guilty of evading a peace officer by reckless driving.

At the January 18, 2008 sentencing hearing, the prosecution requested the court to impose the two-year midterm prison sentence based on defendant’s prior felony convictions and the fact the offense took place in a residential area during daylight hours. The court properly exercised its discretion to deny probation and sentenced him to the two-year midterm in state prison. The court properly stated defendant was entitled to 198 days of actual custody credit and 98 days of good time credit. The court imposed a \$200 restitution fine (Pen. Code, § 1202.4, subd. (b)), a \$200 parole revocation fine to be suspended unless parole is revoked (*id.*, § 1202.45), and a \$20 court security fee (*id.*, § 1465.8). The court ordered defendant to make restitution to the fence owner in an amount to be determined by probation.

Defendant was adequately represented at all stages of the proceedings. We conclude no arguable issues are shown.

DISPOSITION

The abstract of judgment is ordered corrected to reflect that defendant’s conviction of evading a peace officer by reckless driving is imposed pursuant to Vehicle Code

section 2800.2, subdivision (a). The trial court shall direct delivery of the corrected abstract of judgment to the California Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

SIMONS, J.

We concur.

JONES, P.J.

NEEDHAM, J.